HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CCCA No. 57 of 1989

JUDGMENT:

This appeal is preferred by the second defendant aggrieved by the judgment dated 28.04.1989 in O.S.No.790 of 1983 passed by I Additional Judge, City Civil Court, Hyderabad, whereby and whereunder learned Judge decreed the plaintiff's suit for recovery of Rs.56,550/- with proportionate costs and interest at 6 % p.a from 20-12-1980 till the date of realisation.

2) The factual matrix of the case is thus:

a) The case of the plaintiff is that it booked consignment of 270 quintals (300 bags) of Wheat and Maida at Ballabhgadh to Hyderabad on 18.11.1980 and the said stock reached Hyderabad on 06.12.1980. Without any intimation to the plaintiff, the Railway Authorities made an unlawful report to the Inspector of Police, Vigilance Cell, Hyderabad and accordingly, the Vigilance Authorities seized the stocks. Then the Chief Rationing Officer (CRO), Hyderabad, in his Proceedings under Section 6-A of Essential Commodities Act in C1/13780/80 dated 17.05.1982 held the seizure was premature and directed the Inspector of Police, Vigilance Cell to release the stock seized, but the Vigilance Authorities have not taken any action. As can be seen from the Order of CRO, the seized stock was auctioned by the District Collector, Hyderabad, for Rs.56,550/-. The plaintiff contending that it is entitled for the said amount with interest issued legal notice to defendants on 08.07.1982 and filed the suit.

b) Defendant No.1 filed written statement contending that Goods Supervisor of Nampally Railway Station, Hyderabad, informed Vigilance Cell of Civil Supplies Department, Hyderabad that stock of Wheat products and Pulses were dispatched by un-identified agencies from Northern India to Nampally Railway Station and they were lying unclaimed even after expiry of due date for taking delivery.

Thereupon, the Inspector of Police, Vigilance Cell, Civil Supplies Department, Hyderabad, seized 1,182 bags of Wheat and 785 bags of Wheat products and filed a case under Section 6-A of Essential Commodities Act, 1955 vide Cr.No.194/VC/City/80 dated 20.12.1980. Thereupon, the A.P. State Civil Supplies Corporation was asked to take delivery of the stock and dispose of the same. Before it took delivery, some parties filed Writ Petitions before High Court of Andhra Pradesh claiming the stocks and seeking their release. High Court in its Order dated 18.02.1981 in W.P.M.P.No.10153 of 1980 and batch directed release of stock of some parties on security and further directed to dispose of wheat at Rs.210/- per quintal and maida at the prevailing market rate pending disposal of the writ petitions. The plaintiff is one of the Writ Petitioners in W.P.No.6733 of 1980 claiming 300 bags of maida out of seized stock.

c) The further case of defendant is that following the above directions, 300 bags of Maida was auctioned which was knocked down at Rs.56,550/- in favour of M/s Bahadur Ali and Amir Ali and Company, Begum Bazar, Hyderabad and they deposited the amount. Then the CRO Hyderabad, in his Letter Proceedings RC No.C1/13780/80, dt.13.10.1981, requested the Chief Goods Supervisor, Southern Central Railway with whom the stock was lying, to deliver the stock of 300 bags to the purchaser, but he refused to do so. On the other hand, the Deputy Railway Manager, addressed a Letter No.C/C/596/CC/P/81 dated 22.10.1981 to the CRO, Hyderabad, demanding Rs.2,97,457/- towards wharfage charges and Rs.2,881/- towards freight charges for release of the stock. Inspite of intimation of CRO to release the stock and can claim their due afterwards, the Railway Department did not heed. Ultimately the Civil Supplies Department returned back the amount to the purchaser. In the meanwhile, Writ Appeals bearing No. 289 and 323 of 1982 were filed seeking direction for disposal of the stock, but they were dismissed. The first defendant, thus, contended that it is not liable to pay any amount and he prayed for dismissal of the suit.

d) Second defendant filed written statement contending that 300

bags of Maida booked by the plaintiff on 18.11.1980 at Ballabhgarh reached Hyderabad on 06.12.1980 and as the plaintiff did not take delivery within stipulated time and as the stock was essential commodity, the second defendant informed first defendant who seized the stock on 20.12.1980. The plaintiff did not lift the stock even after expiry of free time by paying railway dues viz., wharfage, demurrage and freight charges etc., As per the Railway Act and Rules, if any controlled commodity is lying with the second defendant as un-claimed, the same has to be brought to the notice of Inspector of Police, Vigilance Cell of Civil Supplies Department and the said procedure was followed. The plaintiff was directed in Writ Appeal No. 322 of 1982 to take delivery after paying necessary charges such as wharfage, demurrage and freight charges, which amounted to Rs.2,97,457/- and Rs.2,881/- towards freight charges, but, the plaintiff did not pay. Hence, the plaintiff cannot claim the suit amount from the second defendant.

e) Basing on the above pleadings, the trial Court framed the following issues for trial:

i) Whether the plaintiff is entitled to the payment of Rs.56,550/- as claimed in the plaint from the first defendant ?

ii) Whether the 2nd defendant is also liable to the suit claim ?

iii) Whether the defendants are jointly and severally liable to the suit claim of the plaintiff ?

iv) Whether the plaintiff is entitled to the interest as claimed ?

v) To what relief ?

f) The trial Court after full fledged trial and upon hearing both sides, decreed the suit of the plaintiff as stated in paragraph-1.

3) The parties in the appeal are referred as they were arrayed in the trial Court.

4) Learned counsel for appellant/2nd defendant filed written arguments. Though Notice was served to the first respondent/plaintiff by substituted service, there is no appearance. No representation for

second respondent/1st defendant.

5a) Fulminating the trial Court judgment, learned counsel for appellant/1st defendant vehemently argued that trial Court totally misread the facts, evidence and law and erroneously fastened liability on defendants 1 and 2 to pay suit amount to plaintiff as it ought to have noticed that plaintiff booked the consignment on 18.11.1980 at Ballabhgarh Railway Station to Hyderabad and stock reached Nampally Railway Station on 06.12.1980 and plaintiff failed to lift the stock within 7 days and therefore, on the intimation of Railway Department the stock of the plaintiff and others was seized by Vigilance Cell of CS Department, Hyderabad and subsequently on the direction of Honourable High Court the stock was sold in auction and in that process the stock was retained for considerable period in the godown of the second defendant and therefore, the plaintiff was bound to pay Rs.2,97,457/- towards wharfage charges and Rs.2,811/- towards freight charges and instead of directing the plaintiff to pay the said amount, the trial Court directed the defendants to pay the suit amount which is the value of the stock sold in auction and said direction is devoid of law.

b) Nextly, he argued that the trial Court ought to have held that suit was not maintainable without issuing a statutory notice under Section 78-B of Railways Act, 1890 (for short “Act 1890”) within the period of six months but conversely it made a wrong observation that bar under Section 78-B does not apply to this case.

6) In the light of above argument, the point for determination is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

7) **POINT**: The admitted facts are that the plaintiff booked 300 bags of maida under invoice R.R.No.041059 dated 18.11.1980 from Ballabhgadh and the consignment reached Hyderabad on 06.12.1980 and unloaded at Nampally Railway Station on 06.12.1980 itself. It is also an admitted fact that plaintiff failed to lift the stock within free time of seven days. While so, the stock of wheat

sent by other consignors also was lying unlifted.

a) Now, with reference to the first point of argument raised by the appellant contending that instead of directing the plaintiff to pay wharfage and freight charges to second defendant the trial Court erred in directing the defendants to pay the suit amount, it is pertinent to learn the procedure to be followed by the Railway Department under Act, 1890 to deal with the unclaimed goods.

b) Section 56 of Act, 1890 (Section 84 of New Act, 1989) is relevant and hence extracted thus:

> *"56. Disposal of unclaimed things on a railway— (1) When any animals or goods have come into the possession of the railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.*
>
> *(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto."*

So, the above section lays down that when any consignment is not claimed by any party, the railway administration shall cause a notice to be served upon him requesting to remove the goods and if he failed to do so, the railway administration may within a reasonable time sell the goods as per the provisions laid under foregoing section i.e. Section 55 (Section 83 of New Act 1989)

c) Section 55 of Act, 1890 deals with lien for freight or any other sum due. It reads thus:

> *"55. (1) If a person fails to pay on demand made by or on behalf of the railway administration any rate, or other charge due from him in respect of any animals or goods, the railway administration may*

detain the whole or any of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

(2) When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, or where there are no such newspapers, in such manner as the Government may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto."

Thus Section 56 deals with the method and manner of conducting public auction of the animals or goods in respect of which consignor fails to pay the rates or charges due from him.

8) Be that it may, in the instant case, the Railway Department evidently did not follow the above procedure mandated by Act, 1890. On the other hand, as admitted in the respective written statements of defendant Nos.1 and 2 what the Railways authorities done was that one Ch.Appa Rao, Goods Supervisor, Nampally Goods Shed informed the Vigilance Cell of Civil Supplies Department, Hyderabad that huge stocks of wheat, wheat products and pulses were dispatched by some unidentified agencies from Northern India and they were lying unclaimed even after expiry of due date for taking delivery and requested for taking necessary action. Thereupon the Inspector of Police, Vigilance Cell, Civil Supplies Department, Hyderabad has seized the stock and filed a case under Section 6-A

of Essential Commodities Act, 1955 vide Cr.No.194/VC/City/80 dated 20.12.1980. Ex.B2 letter dated 15.12.1980 addressed by the Goods Supervisor, South Central Railway, Hyderabad to Collector, Civil Supplies, Hyderabad stands testimonial to this fact. He mentioned the consignments of wheat, maida and pulses booked from various stations were lying unclaimed at their depot even after expiry of railway liability period on the consignments and so the Civil Supplies authority may make arrangement to take over the subject consignments under Essential Commodities Act, 1977. As rightly observed by the trial Court it is quite unknown as to how the Railway authorities could draw a presumption of violation of any of the provisions of Essential Commodities Act merely because the goods were not claimed for 9 days or so. It must be said that there is no justification for the Railways authorities to invite the intervention of Civil Supplies Department at the very first instance. This initial faux pas led the Railway authorities to commit some more mistakes as we presently see. Some consignors including plaintiff filed writ petitions before the High Court of Andhra Pradesh claiming ownership and seeking release of the stocks seized. Plaintiff filed W.P.No.6733 of 1980. It appears that interim orders were made in those batch of writ petitions directing release of seized goods on furnishing bank guarantee to the satisfaction of Joint Collector, Hyderabad except 300 bags of maida belonging to plaintiff and 275 quintals of wheat of others which were directed to be sold by Collector. Subsequently the writ petitions were disposed of observing that the interim orders passed in the writ petitions were subject to the result of final orders in the proceedings under Section 6-A of Essential Commodities Act before CRO.

9) Now, coming to the direction of the High Court for sale of 300 bags of maida concerning to plaintiff, pursuant to the said order the said commodity was brought to sale on 01.10.1981 and amount of Rs.56,550/- was realized. The correspondence between CRO, Hyderabad and Divisional Railway Manager (DRM), Secunderabad vide Exs.B3 and B4 would show that CRO informed DRM that as per

the directions of High Court he auctioned the seized wheat, wheat products and the parties had credited the entire bid amount in his office and requested release of 300 bags of maida lying with the Railway Department. However, the department refused to part with the goods and insisted payment of Rs.2,97,457/- towards wharfage charges and Rs.2,811/- towards freight charges on consignment which was auctioned by the Civil Supplies Department. The CRO in Ex.B4 requested that still some wheat has to be disposed of for which auction date was fixed on 30.10.1981 and after completion of sale of entire stock the payment of dues to the Railway Department can be made by duly reconciling the figures and requested to release the stock of 300 bags of maida to party as otherwise stock would be deteriorated. In spite of it, the appellant/second defendant did not release the stock. Ultimately the CRO cancelled the auction and returned the bid amount to auction purchaser.

a) It should be noted that the pervicaciousness of the appellant/second defendant in refusing to heed the word of CRO to release the stock and on the other hand insisting for payment of alleged dues is quite inappreciable. He must have noted that Civil Supplies Department entered into the field only at the instance of second defendant and the CRO conducted auction sale on the directions of High Court. In stead of releasing the stock which was fast deteriorating as per the request of CRO and later claiming dues if any from out of the sale proceeds, the appellant/second defendant made an untenable claim for its dues. When at the inception it tread a wrong path by not following the procedure contemplated under Section 56 of Act, 1890 for disposal of unclaimed stock, the department cannot insist for payment of its alleged dues. Logically speaking, if the Railway Department followed the procedure under Section 56 of Act, 1890 and gave notice to the plaintiff and upon his failure to turn up, sold the consigned goods in public auction, the question of stock lying in its godown and mounting up of wharfage etc. would not have arisen. The appellant/second defendant thus cannot insist for dues against its own fault.

10) It is not out of place to mention here that in respect of similar claim in W.P.No.524 of 1981 this High Court in its order dated 08.10.1982 directed the respondents to pay the value of the wheat sold in auction and specifically held that the writ petitioner was not liable to pay demurrage charges to Railway Department as CRO in his enquiry under Section 6-A of Essential Commodities Act passed an order dated 17.05.1982 that the petitioner was not guilty of contravention of any of the provisions of law or Control Order and seizure of the stock was illegal and without jurisdiction. The instant case of plaintiff also falls in the same groove as plaintiff is one of the parties to the said order vide Ex.A1. So, in that view of the matter, the Railway Department cannot claim any wharfage, freight and demurrage charges in view of the fact that it itself has not followed the due procedure of law at the first instance and became instrumental for seizure of the stock by the Vigilance Cell of Civil Supplies Department which seizure was held to be illegal by the CRO in his order dated 17.05.1982. Pursuant to the said order plaintiff is entitled to the seized stock. However, due to long lapse of time and deterioration of stock, the plaintiff in his letter under Ex.A2 claimed the value of the stock i.e. Rs.56,550/- and the trial Court rightly granted a decree. The appellant/second defendant cannot resist the said claim on the ground that it deserves wharfage, demurrage charges etc.

11) The second contention of appellant/second defendant is that no prior notice under Section 78-B of Act, 1890 was given within six months period from the date of seizure and hence the suit is not maintainable. It must be said that trial Court has exhaustively dealt with this issue and negatived the contention of appellant/second defendant holding firstly, that the present facts of the case would not fall within any of the alternatives provided under Section 78-B of Act, 1890 warranting issuance of notice under Section 78-B since the scheme of Railways Act broadly, and Chapter VII particularly, would show that challenge to a claim under Section 55 to be not very much within the scope of Section 78-B and secondly, that even assuming a duty cast on plaintiff to issue notice within six months, the period

between seizure of the goods and later events which culminated in the order of CRO under Ex.A1 need to be excluded as during that period the plaintiff was under legal disability to claim delivery of goods and ultimately he issued notice under Ex.A2 within two months after Ex.A1—order and hence Ex.A2—notice shall be deemed to be well within statutory period and thirdly, for the reason that the plaintiff can take advantage under proviso to Section 78B in view of pendency of proceedings before the High Court which is well within the prescribed period. Since the above said findings being legally perfect and impregnable, the repetition of same contention in this appeal cannot be countenanced.

12) So, on a conspectus of facts, evidence and law, I find no irregularity or illegality in the judgment of the trial Court warranting interference by this High Court.

13) In the result, this CCCA is dismissed by confirming the judgment of the trial Court passed in O.SNo.790 of 1983. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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U. DURGA PRASAD RAO, J

Date: 05.10.2015

Murthy